MT LEGISLATIVE HISTORY

Chapter 420 1981

Bill H 815 S _____ Original bill & hist. ✓C

H. Committee on Judiciary

Hearing Date(s) Feb 23 ✓C

_____ ___C

_____ ___C

_____ ___C

Date Out Feb 23 ✓C

S. Committee on Judiciary

Hearing Date(s) Mar 23 ✓C

Mar 25 ✓C

_____ ___C

_____ ___C

Mar 25 ✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

SEGREGATED: 3/26
ON MOTION, 3/27, INDEFINITELY POSTPONED, ALL YEAS
BILL DIED

HB 812--LUND, COMMITTEE ON APPROPRIATIONS--TO REPEAL PROVISIONS RELATING TO EXPANDED CHILD DAY-CARE ASSISTANCE AND ITS SLIDING SCALE METHOD OF PAYMENT.
FISCAL NOTE: REQUIRED
INTRODUCED: 2/19
REFERRED TO COMMITTEE ON APPROPRIATIONS: 2/19
HEARING: 2/23
REPORT: DO PASS, 2/23
2ND READING: 2/24 YEAS: 77; NAYS: 13
3RD READING: 2/25 YEAS: 86; NAYS: 12

TRANSMITTED TO SENATE: 2/25
REFERRED TO COMMITTEE ON FINANCE AND CLAIMS: 3/3
HEARING: 3/14
REPORT: 3/16, BE CONCURRED IN
2ND READING: 3/18, BE CONCURRED IN
3RD READING: 3/20, YEAS: 47; NAYS: 1

RETURNED TO HOUSE: 3/20
TRANSMITTED TO GOVERNOR: 3/25
ACTION: SIGNED, 3/26
CHAPTER 162

HB 813--KEYSER, IVERSON--TO CLARIFY THAT EMPLOYEES OF GOVERNMENTAL ENTITIES ARE IMMUNE FROM EXEMPLARY AND PUNITIVE DAMAGES.
INTRODUCED: 2/19
REFERRED TO COMMITTEE ON JUDICIARY: 2/19
HEARING: 2/23
REPORT: DO PASS, 2/23
2ND READING: 2/25, YEAS: 79; NAYS: 12
3RD READING: 2/25, YEAS: 85; NAYS: 12

TRANSMITTED TO SENATE: 2/25
REFERRED TO COMMITTEE ON JUDICIARY: 3/3
HEARING: 3/20
REPORT: 3/24, BE CONCURRED IN, AS AMENDED
2ND READING: 3/27, BE CONCURRED IN
3RD READING: 3/30, YEAS: 22; NAYS: 27
BILL KILLED ON 3RD READING

HB 814--PISTORIA, O'CONNELL, HARPER, ET AL--TO REQUIRE BILLING FOR WATER AND SEWER USE TO BE BASED UPON ACTUAL USE WHEN THE USE IS METERED.....
INTRODUCED: 2/19
REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 2/19
HEARING: 2/23
BILL DIED IN COMMITTEE

HB 815--KEMMIS--TO PROVIDE PROCEDURES AND GUIDELINES FOR TERMINATING THE LEGAL RELATIONSHIP BETWEEN PARENT AND CHILD.
INTRODUCED: 2/19
REFERRED TO COMMITTEE ON JUDICIARY: 2/19
HEARING: 2/23
REPORT: DO PASS AS AMENDED, 2/23
2ND READING: 2/25, YEAS: 74; NAYS: 19
3RD READING: 2/25, YEAS: 84; NAYS: 14

TRANSMITTED TO SENATE: 2/25
REFERRED TO COMMITTEE ON JUDICIARY: 3/3
HEARING: 3/23
REPORT: 3/26, ADVERSE REPORT ADOPTED, YEAS: 32; NAYS: 14
ON MOTION, 3/26, RECONSIDERED AND PLACED ON 2ND READING
2ND READING: 3/31, AS AMENDED, YEAS: 48; NAYS: 2
ON MOTION, 3/31, RULES SUSPENDED, PLACED ON 3RD READING
3RD READING: 3/31, YEAS: 40; NAYS: 9

RETURNED TO HOUSE WITH AMENDMENTS: 3/31
2ND READING: 4/8, YEAS: 87; NAYS: 0
3RD READING: 4/9, YEAS: 95; NAYS: 0

TRANSMITTED TO GOVERNOR: 4/13
ACTION: SIGNED, 4/17
CHAPTER 420

HB 816--FEDA--TO REQUIRE LICENSED AND REGISTERED LOBBYISTS TO REPORT ENTERTAINMENT EXPENSES.
INTRODUCED: 2/20
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 2/20
MOTION, 2/21, TO SUSPEND THE RULES TO A ALLOW A DRAFTING REQUEST FOR THIS BILL. MOTION FAILED, YEAS: 51; NAYS: 43.
BILL DIED

HB 817--MAISKO--TO CLARIFY THAT THE LAW DOES NOT REQUIRE RELEASE ON HIS OWN RECOGNIZANCE OF A DEFENDANT ALLEGING INDIGENCY.....
INTRODUCED: 2/20
REFERRED TO COMMITTEE ON JUDICIARY: 2/20
HEARING: 2/23
BILL DIED IN COMMITTEE

HB 818--DUSSAULT, ECK, HEMSTAD, ET AL--APPROPRIATING MONEY FROM THE GENERAL FUND TO THE BOARD OF REGENTS OF HIGHER EDUCATION FOR THE WORK-STUDY PROGRAM.
INTRODUCED: 2/20
REFERRED TO COMMITTEE ON APPROPRIATIONS: 2/20
HEARING: 3/21
MOTION, 4/4, THAT THE BILL BE TAKEN FROM THE COMMITTEE ON APPROPRIATIONS, PRINTED AND PLACED ON 2ND READING.
MOTION FAILED, YEAS: 42; NAYS: 51
BILL DIED IN COMMITTEE

HB 819--BENGTSON--TO REMOVE CONTRACTED AUDIOLOGICAL SERVICES FROM THE OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION.
INTRODUCED: 2/20
REFERRED TO COMMITTEE ON EDUCATION: 2/20
ON MOTION, 2/21, REREFERRED TO COMMITTEE ON APPROPRIATIONS.
HEARING: 2/23
REPORT: DO PASS, 2/23
2ND READING: 2/25, YEAS: 83; NAYS: 2
3RD READING: 2/25, YEAS: 96; NAYS: 2

TRANSMITTED TO SENATE: 2/25
REFERRED TO COMMITTEE ON EDUCATION: 3/3
HEARING: 3/11
REPORT: 3/17, BE CONCURRED IN, AS AMENDED
2ND READING: 3/19, BE CONCURRED IN
3RD READING: 3/21, YEAS: 48; NAYS: 0

HOUSE BILL NO. 815

INTRODUCED BY Kennis

BY REQUEST OF

THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE PROCEDURES AND GUIDELINES FOR TERMINATING THE LEGAL RELATIONSHIP BETWEEN PARENT AND CHILD."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This [act] may be cited as the "Parent-Child Legal Relationship Termination Act of 1981."

Section 2. Definitions. As used in this [act], unless the context otherwise requires, the following definitions apply:

(1) "Guardian ad litem" means a person appointed to represent a child who is the subject of a written motion for the termination of the parent-child legal relationship.

(2) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in 41-3-102.

(3) "Parent-child legal relationship" means the legal relationship that exists between a child and his birth or adoptive parents as provided in Title 40, chapter 6, part 2, unless that relationship has been terminated by competent judicial decree as provided in this [act] or in 40-6-124 or in 40-6-234.

(4) "Treatment plan" means a written agreement between the department or court and the parents that includes action that must be taken to resolve the condition or conduct of the parents that resulted in the need for protective services for the child. The treatment plan may involve other parties, if necessary, for protective services.

Section 3. Motion for termination -- separate hearing -- right to counsel -- no jury trial. (1) The termination of a parent-child legal relationship shall be considered only after the filing of a petition pursuant to 41-3-3401 alleging the factual grounds for termination. Termination of a parent-child legal relationship shall be considered at a dispositional hearing held pursuant to 41-3-406, following or together with an adjudicatory hearing held pursuant to 41-3-404.

(2) After the county attorney files a motion for termination of a parent-child relationship pursuant to this [act], parents shall be advised of the right to counsel, and counsel shall be appointed in accordance with 41-3-401(12).

(3) An attorney, who whenever possible shall be the child's previously appointed guardian ad litem, shall be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The attorney shall continue

HB 815

to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

(4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.

Section 4. Notice. Before a termination of the parent-child legal relationship based on abandonment may be ordered, the court shall determine whether the rules of civil procedure relating to service of process on the parents have been followed. If the parents were not served personally, the petitioner must file an affidavit stating what efforts have been made to locate the parent or parents of the child. The affidavit must be filed at least 10 days prior to the hearing.

Section 5. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that the circumstances contained in subsection (1)(a), (1)(b), or (1)(c), as follows, exist:

(a) the parents have relinquished the child pursuant to 40-6-124;

(b) the child has been abandoned by his parents as set forth in 41-3-102(3)(d); or

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making such determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judically-ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

Section 6. Review following termination. (1) At the conclusion of a hearing in which the court orders termination of the parent-child legal relationship, the court shall order that a review hearing be held within 180 days following the date of the termination.

(2) At the review hearing, the agency or individual vested with the custody of the child shall report to the court whether the plan for permanent placement of the child has been accomplished. The guardian ad litem shall submit a

LC 0404/01

written report to the court with recommendations to the court, based upon an independent investigation, for disposition meeting the best interests of the child.

(3) The court may order the agency or individual vested with custody of the child to report, at appropriate intervals, on the status of the child until the plan for permanent placement of the child has been accomplished.

Section 7. Effect of decree. (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this [act] may not disentitle a child to any benefit due him from any third person, including but not limited to any Indian tribe, agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any other placement proceedings held pursuant to [section 6].

Section 8. Appeals. Appeals of court orders or decrees made under this [act] shall be given precedence on the calendar of the supreme court over all other matters, unless

HB815

otherwise provided by law.

-End-

JUDICIARY COMMITTEE

47th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
813	To clarify that employees of governmental entites are immune from exemplary and punitive damages, amending section 2-9-105, MCA.	2/19/81	Keyser Anderson	2/23/81	Do Pass 2/23/81	2/23/81
815	To provide procedures and guidelines for terminating the legal relationship between parent and child.	2/19/81	Kemmis	2/23/81	Do Pass as Amended 2/23/81	2/23/81
817	To clarify that the law does not require release on his own recognizance of a defendant alleging indigency if court determines bail nec.	2/19/81	Matsko	2/23/81	Tabled 2/23/81	-
824	To include in the crime of aggravated assault the infliction of bodily injury upon a person who is resp. for the care or custody of a prisoner.	2/23/81	Keyser	2/23/81	Do Pass 2/23/81	2/23/81
853	To revise the laws relating to distribution of the decisions of the Montana Supreme Court.	3/24/81	Shontz	3/27/81	Do Pass 3/27/81	3/27/81

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MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
February 23, 1981

The House Judiciary Committee was called to order at 8:00 a.m. by Chairman Kerry Keyser. All members were present except Rep. Huennekens, who was excused. Jim Lear, Legislative Council, was present.

HOUSE BILL 813 REP. ANDERSON, chief sponsor, stated the purpose of this bill is to clarify that employees of governmental entities are immune from exemplary and punitive damages.

CHAD SMITH stated this bill would enact what people think is the present law. Not only governmental entities would be exempt but also school boards. The difference between punitive damages and actual damages is punitive is something awarded as punishment. Actual damages is court-awarded money to compensate the person directly.

There were no further proponents.

There were no opponents.

In closing, REP. ANDERSON stated an amendment should be made on line 13 striking "and the employees". ANDERSON felt it is a broad interpretation. The wording should be "elected or appointed officials only".

REP. IVERSON asked if this would cover a school board employee. SMITH said yes. REP. IVERSON further stated a school board member is not an employee. Why was that not covered before? SMITH replied it is listed in the definition of employee, EXHIBIT 1.

There was no further discussion on House Bill 813.

HOUSE BILL 809 REP. MANNING, chief sponsor, stated this bill is to license and regulate persons who purport to be able to detect deception, verify truthfulness, or provide a diagnostic opinion with the use of polygraph and to create a Board of Polygraph Examiners.

MIKE STOTTS, Montana Association of Polygraph Examiners, supported the bill. EXHIBIT 2 was given. The main purpose of the bill is to establish the regulations that a person should have to become a polygraph examiner. There has been instances in the state where examiners have come in from out of state who have not gone to school for this. That person basically does it for the money.

There were no further proponents.

There were no opponents.

In closing, REP. MANNING stated the bill is listed to be under the Board of Occupational Licensing, if passed. The association does not have the financial backing to afford this. It would be preferred to have it under the Department of Regulations.

REP. CURTISS questioned the number of members in the association. STOTTS stated there are about 20 members. REP. CURTISS further asked if there is much abuse. STOTTS stated the abuse is usually falsified information.

REP. DAILY asked if information received from the tests could be used in court. STOTTS replied they cannot be used in court unless stipulation by the county attorney and the prosecuting attorney allows it.

REP. SEIFERT asked what percentage is determined accurate. The answer was 95%. There is always room for human error.

HOUSE BILL 817 REP. MATSKO, chief sponsor, moved this bill be tabled. The motion carried unanimously.

HOUSE BILL 815 REP. KEYSER, substituting for sponsor REP. KEMMIS, stated this bill is to provide procedures and guidelines for terminating the legal relationship between parent and child.

BURT ANNIN, Social Rehabilitation Services, stated the bill requires the Department to make certain steps quite clear before the legal relationship between parent and child can be terminated. In those cases, family rehabilitation is kept in tact. This bill would provide the procedures to do that. Prior to the termination of rights a plan would have to be followed and shown it was not completed successfully. This would provide consistency throughout the state. Section 6 of the bill requires if the relationship is terminated the court review the placement of the child within six months. That way the child will not be transferred from foster home to foster home.

There were no further proponents.

There were no opponents.

REP. CURTISS asked if children of certain ages were difficult to place. ANNIN stated section 6 of the bill would help that. If adoption, because of the child's age, is not feasible, they need to be placed in a permanent environment.

REP. KEEDY asked if this would be determined by the county attorney.

ANNIN replied the county attorney signs the petition when the state starts action. Before the parent-child relationship can be terminated the petition is signed by the county attorney. REP. KEEDY asked about page 2, line 17. ANNIN stated that wording should be "petitioned". Also, line 11, page 2 should be 41-3-401. ANNIN said this bill is derived from a Colorado statute where a task force met over a year to discuss this subject.

That ended the discussion on House Bill 815.

EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 8:40 a.m.

HOUSE BILL 809 REP. SEIFERT moved to table the bill.

The motion passed unanimously.

HOUSE BILL 813 REP. SEIFERT moved do pass.

REP. SHELDEN moved to amend line 13, page 1 after "entitied" to strike "employees" and to insert "elected or appointed officials when acting in their official capacity".

JIM LEAR felt that "when acting in their official capacity" was redundant.

It was decided to hold action on this bill until the sponsor, REP. ANDERSON, was back in committee.

HOUSE BILL 729 REP. DAILY moved do pass.

REP. SHELDEN felt this bill was a simple thing that would allow people to form a corporation to prepay money and get legal assistance when needed. REP. CURTISS felt this was already available. REP. KEYSER stated the plan cannot be adopted without the bill being passed.

A roll call vote resulted. Those voting no were: KEYSER, SEIFERT, BENNETT, CURTISS, IVERSON, MATSKO, and MCLANE. Those voting yes were: CONN, DAILY, ABRAMS, SHELDEN, KEEDY and BROWN. The motion failed 7 to 6. The vote was reversed to do not pass. Those voting yes were: KEYSER, SEIFERT, BENNETT, CURTISS, IVERSON,

MATSKO and MCLANE. Those voting no were: CONN, DAILY, ABRAMS, SHELDEN, KEEDY and BROWN.

The motion of do not pass carried 7 to 6.

The meeting recessed at 9:00 a.m.

The meeting reconvened at 12:50 p.m.

HOUSE BILL 813 REP. ANDERSON moved do pass.

REP. ANDERSON stated he would make an amendment on the House Floor to strike "employees" and insert "elected or appointed officials when acting in an official capacity". REP. ANDERSON stressed it does not apply just to school board, but would affect members of commissions also.

REP. BENNETT stated JIM LEAR felt "when acting in an official capacity" was not needed. After a brief discussion, REP. ANDERSON was happy to accept that language.

REP. DAILY stated it would seem that punitive is the only type of damages they could sue for. REP. ANDERSON replied they could be sued for actual damages.

REP. IVERSON stated some school boards in California have been sued for malpractice suits.

REP. DAILY stated that actual damages could be proven and punitive damages are awarded.

The motion of do pass carried. Representatives BROWN, DAILY, BENNETT, KEEDY and IVERSON voted against the motion.

HOUSE BILL 815 REP. BROWN moved do pass.

REP. DAILY moved to amend line 11, page 2 striking 41-3-3401 and inserting 41-3-401. The amendment carried unanimously.

REP. DAILY moved on page 2, line 8 to strike "motion" and insert "petition" and to place it throughout the bill as needed. The motion carried unanimously.

REP. DAILY moved do pass as amended.

REP. HANNAH was concerned with who decides the answers to whether the parents are doing the job. REP. KEYSER replied the SRS and

courts decide.

REP. HANNAH stated page 5 sections D-E-G lets the SRS take the child away. There is no jury trial. REP. BROWN stated section 5 is what the courts can use and not the SRS. The bill will protect the children to help make them stabilized in a good environment.

REP. CURTISS stated the reason the bill is introduced is to prevent children from going from home to home. She did not feel that was consistent with some of the work of the Department.

REP. KEYSER told the committee present law 41-3-401 deals with abused, neglected and dependency proceedings.

The motion of do pass as amended carried with HANNAH, CURTISS, and MCLANE voting no.

HOUSE BILL 824 REP. KEYSER went over the bill with the committee. This was a committee bill to include in the crime of aggravated assault the infliction of bodily injury upon a person who is responsible for the care of custody of a prisoner; amending section 45-5-202, MCA.

REP. MATSKO moved do pass. The motion carried unanimously.

A suggestion was made to let REP. BRAND carry the bill since it dealt with his original bill concerning prison guards. It was agreed that REP. BRAND would sign the bill.

The meeting adjourned at 1:20 p.m.

KERRY KEYSER, CHAIRMAN

mr

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION, 1981

FEBRUARY/MARCH

	Date													
Name	17	18	19	20	22	23	3	4	5	6	9	10	11	12
Kerry Keyser, Chairman	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Carl Seifert, Vice Chr	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Gary Bennett	X	X	X	X	X	X	X	X	X	X	X	A	X	X
Alison Conn	E	X	X	X	X	X	X	X	X	X	A	X	X	A
Aubyn Curtiss	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Ralph Eudaily	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Tom Hannah	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Dennis Iverson	X	X	X	X	X	X	E	X	X	E	X	X	X	X
John Matsko	X	X	X	X	X	X	X	X	X	E	X	X	X	X
Jean McLane	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Bob Anderson	X	X	X	X	X	X	X	X	X	X	X	X	X	A
Fritz Daily	X	X	X	X	E	X	X	X	X	X	X	X	X	E
Hubert Abrams	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Herb Huennekens	X	X	X	X	X	E	X	X	E	E	E	E	E	E
Art Shelden	X	X	X	X	X	X	X	X	A	X	E	X	X	X
Michael Keedy	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Wes Teague	X	X	X	X	X	X	A	X	X	X	X	X	X	E
Dan Yardley	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Dave Brown	X	X	X	X	X	X	X	X	X	X	X	X	X	X

X = Present
A = Absent
E = Excused Absent

VISITORS' REGISTER

HOUSE Judiciary COMMITTEE

BILL 815 Date 2/23/81

SPONSOR Kemmis

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Burt Annin		SRS	✓	
Russ Cater		Mt. Legal Service	✓	
Marion Cate		SRS	✓	
Dallas Hibbard		SRS	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

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Form CS-33
1-81

HOUSE BILL NO. 815

INTRODUCED BY KEMMIS

BY REQUEST OF

THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE PROCEDURES AND GUIDELINES FOR TERMINATING THE LEGAL RELATIONSHIP BETWEEN PARENT AND CHILD."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This [act] may be cited as the "Parent-Child Legal Relationship Termination Act of 1981."

Section 2. Definitions. As used in this [act], unless the context otherwise requires, the following definitions apply:

(1) "Guardian ad litem" means a person appointed to represent a child who is the subject of a written motion for the termination of the parent-child legal relationship.

(2) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in 41-3-102.

(3) "Parent-child legal relationship" means the legal relationship that exists between a child and his birth or adoptive parents as provided in Title 40, chapter 6, part 2, unless that relationship has been terminated by competent judicial decree as provided in this [act] or in 40-6-124 or in 40-6-234.

(4) "Treatment plan" means a written agreement between the department or court and the parents that includes action that must be taken to resolve the condition or conduct of the parents that resulted in the need for protective services for the child. The treatment plan may involve other parties, if necessary, for protective services.

Section 3. ~~Motion~~ PETITION for termination -- separate hearing -- right to counsel -- no jury trial. (1) The termination of a parent-child legal relationship shall be considered only after the filing of a petition pursuant to ~~41-3-340~~ 41-3-401 alleging the factual grounds for termination. Termination of a parent-child legal relationship shall be considered at a dispositional hearing held pursuant to 41-3-406, following or together with an adjudicatory hearing held pursuant to 41-3-404.

(2) After the county attorney files a ~~motion~~ PETITION for termination of a parent-child relationship pursuant to this [act], parents shall be advised of the right to counsel, and counsel shall be appointed in accordance with 41-3-401(12).

(3) An attorney, who whenever possible shall be the child's previously appointed guardian ad litem, shall be appointed to represent the child's best interests in any hearing determining the involuntary termination of the

THIRD READING

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parent-child legal relationship. The attorney shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

(4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.

Section 4. Notice. Before a termination of the parent-child legal relationship based on abandonment may be ordered, the court shall determine whether the rules of civil procedure relating to service of process on the parents have been followed. If the parents were not served personally, the petitioner must file an affidavit stating what efforts have been made to locate the parent or parents of the child. The affidavit must be filed at least 10 days prior to the hearing.

Section 5. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that the circumstances contained in subsection (1)(a), (1)(b), or (1)(c), as follows, exist:

(a) the parents have relinquished the child pursuant to 40-6-124;

(b) the child has been abandoned by his parents as set

forth in 41-3-102(3)(d); or

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making such determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by

the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judically-ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

Section 6. Review following termination. (1) At the conclusion of a hearing in which the court orders termination of the parent-child legal relationship, the court shall order that a review hearing be held within 180 days following the date of the termination.

(2) At the review hearing, the agency or individual vested with the custody of the child shall report to the court whether the plan for permanent placement of the child

has been accomplished. The guardian ad litem shall submit a written report to the court with recommendations to the court, based upon an independent investigation, for disposition meeting the best interests of the child.

(3) The court may order the agency or individual vested with custody of the child to report, at appropriate intervals, on the status of the child until the plan for permanent placement of the child has been accomplished.

Section 7. Effect of decree. (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this [act] may not disentitle a child to any benefit due him from any third person, including but not limited to any Indian tribe, agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any other placement proceedings held pursuant to [section 6].

Section 8. Appeals. Appeals of court orders or decrees made under this [act] shall be given precedence on the

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calendar of the supreme court over all other matters, unless otherwise provided by law.

-End-

FORTY-SEVENTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
HB 758	3/04/81	3/20/81	3/23/81						3/23/81
HB 761	3/03/81	3/16/81	3/23/81					3/23/81	
HB 773	3/04/81	3/18/81	3/21/81					3/21/81	
HB 813	3/05/81	3/20/81	3/23/81					3/23/81	
HB 815	3/04/81	3/23/81	3/25/81						3/25/81(amended
HB 824	3/04/81	3/20/81	3/21/81				3/21/81		

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
MARCH 23, 1981

The fiftieth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 815:

TO PROVIDE PROCEDURES AND GUIDELINES FOR TERMINATING THE LEGAL RELATIONSHIP BETWEEN PARENT AND CHILD.

The bill was presented by Rep. Kemmis, District 94, as having the purpose of bringing uniformity and coherence to the laws governing the termination of the relationship between parent and child.

John Madsen, representing the S.R.S., said that this bill would strengthen the rights of parents and children, and that it is patterned after a Colorado law. His written testimony is attached.

David Stewart supported the bill as shown on his attached written testimony, and suggested an amendment to the bill which would give a child's natural parents the "right of first refusal" to adopt their child if their rights were previously terminated.

Russell Cater, representing the Montana Legal Services, supported the bill because it is fair to the parties concerned. He said that a Colorado judge thinks the bill works very well in Colorado.

Senator Crippen asked Rep. Kemmis about the proposed amendment raised by Mr. Stewart, and was told that it may present problems in the interests of the children. He felt the bill contained sufficient safeguards along the line raised by the amendment, but said that he would not oppose it.

CONSIDERATION OF SENATE JOINT RESOLUTION 30:

REQUESTING AN INTERIM STUDY OF DELAYS OF APPEALS IN CRIMINAL CASES.

Senator Aklestad, District 6, presented the resolution,

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date MARCH 23

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Mike, Chr. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

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TESTIMONY ON HOUSE BILL 815

PRESENTED BY: John J. Madsen, Protective Services Consultant

REPRESENTING: Montana Department of Social and Rehabilitation Services

During the course of providing protective services to children it sometimes becomes apparent that parental rights must be terminated. The Department of Social and Rehabilitation Services at the present time can petition thru the county attorney, to have parental rights terminated. The Agency is not seeking new authority with this bill.

The Department of Social and Rehabilitation Services is requesting this bill because the Agency wishes to strengthen the rights of parents and children and to make consistant the procedures under which parents rights to children can be terminated.

This bill is modeled after Colorado statute which was drawn up by a group of child advocates working outside of the agency structure. Although it was not generally supported by the Colorado Human Services Agency due to increased workload the Colorado legislation was passed.

House Bill 815 sets down minimum criteria for courts to consider when considering termination of parental rights. Presently there are no such standards in statute and therefore inconsistancy occurs across the state. The bill will cause the Department and the courts to use the same standards statewide. At present the same case which might result in termination in Missoula could be a long term foster care case in Miles City.

The two most important parts of this bill are found in Sections 5 and 6.

In Section 5 (c) (1) the bill says that before a court may consider termination of parental rights the Department must have attempted a treatment plan approved by the court. The parents must have failed, or not complied with the treatment plan. Treatment plan is defined in Section 1 (4). That means that the Department and the parent must have been before the court at least once before, and that the judge must have approved the plan which the Department and parents have agreed to work on to change the situation which is dangerous to the child.

Section 6 of this bill sets up a review process by the courts after termination of parental rights. This section is designed to prevent children from drifting in foster care after termination. It allows the judge to continue involvement in the case until a permanent placement is made for the child.

The Department of Social and Rehabilitation urges your approval of House Bill 815.

NAME: John Madsen DATE: 3-23-8

ADDRESS:

PHONE: 442-6613

REPRESENTING WHOM? SRS

APPEARING ON WHICH PROPOSAL: SB 815

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: David W. Stewart DATE: 3/23/81

ADDRESS: 2315 National Ave. Helena

PHONE: 442-0677

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: HB 815

DO YOU: SUPPORT? _____ AMEND? ✓ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

House Bill #815

It is a sad day when a family situation deteriorates to the point that would require the intervention by the state as this bill will permit. On the other hand we would be less than responsible if we do not recognize that it must be done.

I would like to offera suggestion that I believe would lessen the impact in some cases. This would only affect adopted children..

Following the determination that the relationship should be terminated (as on page 5 line 16), I suggest that you include the provision that the natural parent of the adopted child be contacted to determine if they would want to again assume the responsibility for the child. The Judge could make an initial determination as to whether or not this is desireable based on the circumstances of the adoption. It is concieveable that the natural parent from whom the child was adopted may want the child back. This would lessen the impact of leaving what may have been the only home the child ever knew regardless of how bad it was It could also result in putting the child in a home where it would know the love and security it needed.

It is also concievable that it could result in substantial savings of tax dollars since the state may in the end wind up supporting the child.

I would like to call on a personal experience if I may in support of this change. I adopted two children several years ago, my oldest son and daughter. It has been a very rewarding experience. I also had a daughter adopted against my will and without my consent. My ex-wife and her husband and I will be in court on a rehearing on that adoption this year on early next year, in Ohio. I believe I can prove that it was not only obtained by the use of fraud and perjury but that their Attorney knew it before they had the hearing. I mentioned this only to illistrate the point that there are times when the natural parent would want the child that was adopted.

I believe our own state law provides for adoption without the consent of the natural parent under certain circumstances. We therefore may be open to the same things occuring here.

David W. Stewart

BEST COPY AVAILABLE

NAME: Russell Cater DATE: 3/23/31

ADDRESS: C/O Montana Legal Services 301 Sterlingbert Blk
616 Helena Ave., Helena, Mt. 59601

PHONE: 442-9330

REPRESENTING WHOM? Montana Legal Services

APPEARING ON WHICH PROPOSAL: H.B. 918

DO YOU: SUPPORT? Yes AMEND? _____ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Norma Vestre DATE: _____

ADDRESS: Helena

PHONE: 449-3865

REPRESENTING WHOM? SRS

APPEARING ON WHICH PROPOSAL: HB 815

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

March 22, 1981

Senate Judiciary Committee
Attention: Senator Joseph Mazurek

Gentlemen:

I regret that I was unable to testify personally regarding the bill proposing that joint custody be the legal first choice when the future of children involved in a divorce situation is the consideration. I was unable to attend the hearing, because I was teaching a class, not coincidentally called Human Behavior. Human beings, and especially children, are my business. To provide some background, I worked in Child Welfare Services for seventeen years, beginning at line level and ending my public service years as Chief of the Child Welfare Services Bureau. I do private counseling around divorce, custody and parent-child problems, and I have been used frequently by the court and by attorneys in Helena to evaluate and recommend custody plans and to intervene in parental battles over custody and visitation. I also am consultant to three children's programs in Helena, and am currently on the governing board of Child Welfare League of America, the standard-setting agency, on a national level, for children's services and advocacy for children.

I cannot state too strongly my support for the joint custody position. It is essential to the healthy growth and development of the child to feel that he/she ~~feel~~ has the ongoing love and support of both parents, whatever differences those parents may have with each other. Neither law or parent can sever a parent-child relationship, only the child can do that - and usually the child doesn't. Step-parents do not fill the void, and whatever the reason for which a parent may eliminate him/herself from the child's life, the child sees it as rejection and lack of love. These children show severe depression and build funds of anger, which they often take out on all of us in adolescence, when kids, by nature, "let it all hang out". The child who doesn't know the reality of a parent is a prime candidate for developing a fantasy parent. I have dealt with these kids in treatment, trying to help the custodial parent cope with a rival who is a perfect parent - because the child has created that parent out of the dreams of what a child would like a parent to be - or, to cope with the severe acting-out of a child who has identified with all of the negative

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aspects of the absent parent, since negatives are all he/she has heard.

Joint custody is a legal tool, but it is also a message to embattled parents that you may divorce your spouse, but you can't divorce your children. It encourages both parents to remain involved, and we know many parents who drift away, do so because they feel that they no longer have any say in their children's lives. It prevents a parent, in the heat of initial anger, from witholding all contact so that a base for communication is never reached. I have recommended joint custody when at least one parent is completely opposed, and they have found that when they have to communicate about their child, they are able to do so.

The most significant study of children and divorce to date was recently completed by Judith Wallerstein and Joan Berlin Kelley. This was an exhaustive study, done over a five-year period, and the results are now published in their book "Surviving the Breakup" (Basic Books, 1980). The authors state, "Taken as a whole our findings point to the desirability of the child's continuing relationship with both parents during the postdivorce years...joint legal custody may provide the legal structure of choice. Although the influence of legal structure on the fabric of family life may be considerably less than many persons believe it to be, nevertheless there is some evidence that legal accountability may influence and shore up financial and psychological responsibility." In their summary, the authors state they take, "a position in favor of flexibility and encouragement of joint legal custody where feasible, as a symbol of society's recognition of the child's continuing need for both parents."

As a divorced parent myself, and as a professional who has spent twenty-six years working with troubled children and their bewildered parents, I earnestly plea that you recommend passage of the joint custody bill. I do this in behalf of the children, who have a right to both of their parents; the parents, who love their children, but often blight their lives out of anger and ignorance; and the society in which we all live and which ultimately has to try to cope with the anger and depression of our children.

Sincerely,

Margaret Stuart

Margaret Stuart, Director
Social Work Program
Carroll College

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DATE March 23, 1981

COMMITTEE ON JUDICIARY BILL NO.

HB 815
SJR 30

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Opp
Susan Sust	Mt Hon. Ed. Assoc. HB 815		
Craig B Fund	SRS	✓	

(Please leave prepared statement with Secretary)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
MARCH 25, 1981

The fifty-second meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

Every member was present.

CONSIDERATION OF AMENDMENTS TO COMMITTEE BILLS:

Relative to the two proposed committee bills drawn for the purpose of reinstituting the small claims court system in Montana, amendments had been prepared by David Niss which would answer some of the problems described by Gladys Vance, a Cascade County justice.

Senator Anderson described the problem in Cascade County as being one of scheduling ten or fifteen cases to be heard, only to have one or two appear at the given time. He said that the suggested amendments would help the non-appearance problem.

Mike McCabe, Helena justice, said that the problem is much worse in Cascade County than it is anywhere else in the state, and the present default provision is adequate remedy if it is just used. He also objected to the six-day response requirement contained in the bills.

Senator Mazurek stated that he also disliked the amendments because they turned the small claims court into something more complicated and therefore less available to the people it is intended to help.

Senator Crippen felt that the amendments would do the reverse of the intent of the bill, which is to get more of these actions settled in the small claims court.

CONSIDERATION OF SENATE BILL 485:

CREATING A SMALL CLAIMS COURT
PROCEDURE WITHIN JUSTICE'S
COURT (REMOVAL PROVISION)

David Niss explained that the bill would repeal all of current Title 25, chapter 35, relative to the small claims court within justice's court. He pointed to the two new

a conflict, and said that there should be an exception added if the bill is passed, insuring that Section 22 would deal with the appeal. He also wondered, in cases that are removed from small claims court to justice's court, if there was a constitutionality problem because no distinction was made between what is "removed" and what is not.

David Niss said that there would be no constitutionality problem because a waiver has been made to a jury trial under those circumstances. He added that Gladys Vance had mentioned other problem areas, specifically 1) limiting to three the number of complaints per person per year which could be brought in small claims court; 2) defendants' denying prior knowledge of the charges being brought; and 3) including in the attorney general's publication advice to defendants as well as to plaintiffs if an answer is to be required as proposed in the offered amendments.

The committee decided to have Chairman Anderson write to the Cascade County justice advising her that the committee had decided not to include her suggestions in either bill, and giving her the reasons for their decision.

DISPOSITION OF SENATE BILL 486:

Senator Berg moved that the bill be TABLED, and his motion passed unanimously.

DISPOSITION OF SENATE BILL 485:

Senator S. Brown moved the second amendment as shown on the attached Committee Report, and his motion carried unanimously. Senator Mazurek moved the remaining amendments shown on the attached Committee Report, and they passed unanimously except for the New Section 25 included in the eighth amendment, which Senator Olson opposed. Senator Berg moved that the bill DO PASS AS AMENDED, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 536:

Senator Mazurek moved that the bill BE CONCURRED IN, and his motion passed over Senator Tveit's objection.

DISPOSITION OF HOUSE BILL 815:

Senator Mazurek moved to amend the bill as shown on the attached Committee Report, and his motion passed unanimously. Senator Tveit moved that the bill BE NOT CONCURRED IN AS AMENDED, and his motion passed over the opposition of Senators Mazurek, Berg, and S. Brown.

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date March 25, 19

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

March 26, 1981

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 815 be amended as follows:

1. Page 1.
Following: line 12
Insert: "Section 2. Purpose. This act provides procedures and criteria by which the parent-child legal relationship may be terminated by a court if the relationship is not in the best interest of the child. The termination of the parent-child legal relationship provided for in this act is to be used in those situations where there is a determination that a child is abused, neglected, or dependent, as defined in 41-3-102, MCA. "
Renumber: subsequent sections

2. Page 7,
Following: line 2
Insert: "Section 9. Codification instruction. Sections 1 through 8 are intended to be codified as an integral part of Title 40, chapter 3."

...RDING COMMITTEE REPORT

March 25, 19 81

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 815

Respectfully report as follows: That HOUSE Bill No. 815,

this reading copy, be amended as follows:

1. Page 1.
Following: line 12
Insert: "Section 2. Purpose. This act provides procedures and criteria by which the parent-child legal relationship may be terminated by a court if the relationship is not in the best interest of the child. The termination of the parent-child legal relationship provided for in this act is to be used in those situations where there is a determination that a child is abused, neglected, or dependent, as defined in 41-3-102, MCA.
Renumber: subsequent sections

2. Page 7,
Following: line 2
Insert: "Section 9. Codification instruction. Sections 1 - 8 are intended to be codified as an integral part of Title 40, chapter 3.

And, as so amended,
~~DO PASS~~
~~DO NOT PASS~~
DO NOT CONCUR IN

Mike Anderson Chairman.

STATE PUB. CO.
Helena, Mont.

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March 31, 1981

SENATE COMMITTEE OF THE WHOLE

Proposed amendment to House Bill 815, third reading copy, as follows:

That the following amendment of the Senate Standing Committee on Judiciary of March 26, 1981, be amended to read as follows:

2. Page 7.
Following: line 2.
Insert: "Section 9. Codification instruction. Sections 1 through 8 are intended to be codified as an integral part of Title 41, chapter 3."

HOUSE BILL NO. 815

INTRODUCED BY KEMMIS

BY REQUEST OF

THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE PROCEDURES AND GUIDELINES FOR TERMINATING THE LEGAL RELATIONSHIP BETWEEN PARENT AND CHILD."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This [act] may be cited as the "Parent-Child Legal Relationship Termination Act of 1981."

SECTION 2. PURPOSE. THIS ACT PROVIDES PROCEDURES AND CRITERIA BY WHICH THE PARENT-CHILD LEGAL RELATIONSHIP MAY BE TERMINATED BY A COURT IF THE RELATIONSHIP IS NOT IN THE BEST INTEREST OF THE CHILD. THE TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP PROVIDED FOR IN THIS ACT IS TO BE USED IN THOSE SITUATIONS WHERE THERE IS A DETERMINATION THAT A CHILD IS ABUSED, NEGLECTED, OR DEPENDENT, AS DEFINED IN 41-3-102, MCA.

Section 3. Definitions. As used in this [act], unless the context otherwise requires, the following definitions apply:

(1) "Guardian ad litem" means a person appointed to represent a child who is the subject of a written motion for the termination of the parent-child legal relationship.

(2) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in 41-3-102.

(3) "Parent-child legal relationship" means the legal relationship that exists between a child and his birth or adoptive parents as provided in Title 40, chapter 6, part 2, unless that relationship has been terminated by competent judicial decree as provided in this [act] or in 40-6-124 or in 40-6-234.

(4) "Treatment plan" means a written agreement between the department or court and the parents that includes action that must be taken to resolve the condition or conduct of the parents that resulted in the need for protective services for the child. The treatment plan may involve other parties, if necessary, for protective services.

Section 4. ~~Motion~~ PETITION for termination -- separate hearing -- right to counsel -- no jury trial. (1) The termination of a parent-child legal relationship shall be considered only after the filing of a petition pursuant to ~~41-3-3401~~ 41-3-401 alleging the factual grounds for termination. Termination of a parent-child legal relationship shall be considered at a dispositional hearing held pursuant to 41-3-406, following or together with an adjudicatory hearing held pursuant to 41-3-404.

(2) After the county attorney files a ~~motion~~ PETITION

REFERENCE BILL

HB 0815/03

for termination of a parent-child relationship pursuant to this [act], parents shall be advised of the right to counsel, and counsel shall be appointed in accordance with 41-3-401(12).

(3) An attorney, who whenever possible shall be the child's previously appointed guardian ad litem, shall be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The attorney shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

(4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.

Section 5. Notice. Before a termination of the parent-child legal relationship based on abandonment may be ordered, the court shall determine whether the rules of civil procedure relating to service of process on the parents have been followed. If the parents were not served personally, the petitioner must file an affidavit stating what efforts have been made to locate the parent or parents of the child. The affidavit must be filed at least 10 days

prior to the hearing.

Section 6. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that the circumstances contained in subsection (1)(a), (1)(b), or (1)(c), as follows, exist:

(a) the parents have relinquished the child pursuant to 40-6-124;

(b) the child has been abandoned by his parents as set forth in 41-3-102(3)(d); or

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making such determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judically-ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

Section 7. Review following termination. (1) At the conclusion of a hearing in which the court orders termination of the parent-child legal relationship, the court shall order that a review hearing be held within 180 days following the date of the termination.

(2) At the review hearing, the agency or individual vested with the custody of the child shall report to the court whether the plan for permanent placement of the child has been accomplished. The guardian ad litem shall submit a written report to the court with recommendations to the court, based upon an independent investigation, for disposition meeting the best interests of the child.

(3) The court may order the agency or individual vested with custody of the child to report, at appropriate intervals, on the status of the child until the plan for permanent placement of the child has been accomplished.

Section 8. Effect of decree. (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this [act] may not disentitle a child to any benefit due him from any third person, including but not limited to any Indian tribe,

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agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any other placement proceedings held pursuant to [section 6].

Section 9. Appeals. Appeals of court orders or decrees made under this [act] shall be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law.

~~SECTION 9. CODIFICATION INSTRUCTION. SECTIONS 1 THROUGH 8 ARE INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 40, CHAPTER 3.~~

SECTION 10. CODIFICATION INSTRUCTION. SECTIONS 1 THROUGH 8 ARE INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 41, CHAPTER 3.

-End-